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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

23 CR 631 (ER)

5 BANQUE PICTET & CIE SA,

6 Plea

7 Defendant.

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8 New York, N.Y.
9 December 4, 2023
11:00 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

15 DANIEL G. NESSIM

Assistant United States Attorney

16 -AND-

17 UNITED STATES DEPARTMENT OF JUSTICE

BY: NANETTE L. DAVIS

18 KAPLAN HECKER & FINK LLP

Attorneys for Defendant

19 BY: SEAN HECKER

-AND-

20 DEBEVOISE & PLIMPTON, LLP (NYC)

21 BY: DAVID A. O'NEIL

AYMERIC DUMOULIN

22 Also Present:

23 KATHLEEN FIATO, IRS, Special Agent

24 JEAN-PHILIPPE NERFIN, Executive Committee Member Banque
Pictet & Cie SA

25 SHELBY DU PASQUIER, Lenz Staehelin

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1 (Case called)

2 MR. NESSIM: Good morning, your Honor. Daniel Nessim
3 for the SDNY U.S. Attorney's Office, and Nanette Davis for the
4 Department of Justice's Tax Division for the government. We're
5 also joined at counsel table by Special Agent Kathleen Fiato of
6 the IRS.

7 THE COURT: Good morning.

8 MS. DAVIS: Good morning.

9 MR. HECKER: Good morning, your Honor. Sean Hecker
10 for Banque Pictet & Cie. And I am joined at counsel table by
11 David O'Neil, Jean-Philippe Nerfin from the bank, Shelby
12 Du Pasquier from the law firm of Lenz Staehelin, with Court's
13 permission — he's been counsel to the bank — and Aymeric
14 Dumoulin of Debevoise.

15 THE COURT: Absolutely. You're all welcome to remain
16 at the table.

17 Mr. Hecker, how do I pronounce the bank's name?

18 MR. HECKER: Pictet.

19 THE COURT: Pictet? So don't pronounce the C?

20 MR. HECKER: Correct, or at least not in a hard way.

21 THE COURT: Okay. You can remain seated; no one has
22 to stand.

23 What are we doing, Mr. Nessim?

24 MR. NESSIM: Your Honor, I believe that the defendant
25 intends to waive indictment, consent to the filing of a

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1 one-count information.

2 The parties have reached a deferred prosecution
3 agreement; and, if the filing of the information is acceptable
4 to the Court, we will seek the exclusion of time consistent
5 with a three-year term of that agreement.

6 THE COURT: Very well.

7 Mr. Hecker?

8 MR. HECKER: We agree with that description, your
9 Honor. And we are prepared to waive indictment and proceed by
10 information.

11 THE COURT: Very well.

12 Now, I took a corporate plea several years ago, and I
13 forget exactly what to do, but let me just see if we can't walk
14 through this.

15 Mr. Hecker, who is the corporate representative?

16 MR. HECKER: Jean-Philippe Nerfin, seated to my right.

17 THE COURT: Mr. Nerfin.

18 And, Mr. Hecker, has the corporation, or the board of
19 directors of the corporation, authorized Mr. Nerfin to appear
20 on their behalf?

21 MR. HECKER: Yes, your Honor.

22 THE COURT: And has the corporation issued a board
23 resolution authorizing the corporation to waive indictment in
24 this case?

25 MR. HECKER: Yes, your Honor.

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1 THE COURT: And, Mr. Hecker, are you satisfied that
2 the corporation understands the rights that it is giving up by
3 waiving indictment?

4 MR. HECKER: Yes, your Honor.

5 THE COURT: Mr. Nessim, is there anything else that I
6 should ask in that regard?

7 MR. NESSIM: No, your Honor, except to note that the
8 board resolution is Exhibit A to the deferred prosecution
9 agreement that was provided to the Court previously, and I can
10 hand up a copy as well.

11 THE COURT: I do have a copy of it.

12 It indicates, among other things, that the board has
13 unanimously voted to enter a deferred prosecution agreement,
14 including consenting to the filing of a one-count criminal
15 information in this court, charging the bank with conspiring
16 with others to defraud the United States to file false federal
17 tax returns, in violation of Title 26, and to evade federal
18 income taxes in violation of Title 26, Section 7201, and to
19 waive indictment on this charge.

20 Mr. Hecker, does the corporation consent to the filing
21 of the information?

22 MR. HECKER: It does, your Honor.

23 THE COURT: Have you spoken with the corporation
24 concerning the possible punishment that it faces by allowing
25 the information to be filed?

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1 MR. HECKER: Yes, your Honor, with respect to the
2 payments that are specified in the board resolution on the
3 second page of that resolution.

4 THE COURT: And, Mr. Nerfin, will you confirm for the
5 Court that the corporation is aware, and has discussed with
6 counsel, the consequences of allowing the information to be
7 filed?

8 MR. NERFIN: Yes, I confirm, your Honor.

9 THE COURT: Is there anything else I should ask in
10 that regard, Mr. Nessim?

11 MR. NESSIM: No, your Honor.

12 THE COURT: Very well.

13 According to the plea agreement, the corporation has
14 agreed to pay certain amounts.

15 Did you wish to put that on the record, Mr. Nessim?

16 MR. NESSIM: Yes, your Honor.

17 Just for the record, it's a deferred prosecution
18 agreement, not a plea agreement.

19 THE COURT: I'm sorry, yes.

20 MR. NESSIM: Under the terms of that agreement, the
21 bank agrees to pay restitution in the amount of \$31,844,192, a
22 forfeiture judgment in the amount of \$52,164,201, and a penalty
23 of \$38,950,998, for a cumulative financial payment of
24 \$122,959,391.

25 THE COURT: For the record, the government has

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1 provided to me – and I have reviewed prior to today's
2 appearance – a stack of materials that include an exhibit to
3 the deferred prosecution agreement. It includes a copy of the
4 information, which will be filed in connection with the
5 deferred prosecution agreement; it includes a statement of
6 facts concerning the acts underlying the deferred prosecution
7 agreement; and it also includes a copy of a complaint to be
8 filed in connection with the amount forfeited pursuant to the
9 deferred prosecution agreement.

10 Now, do I have to allocute the corporation as to
11 whether it pleads guilty or not?

12 MR. NESSIM: No, your Honor, we don't believe so.

13 THE COURT: So am I done?

14 MR. NESSIM: Your Honor, we would request that the
15 Court exclude three years, under the Speedy Trial Act, from
16 today's date, and that would be in the interests of justice, to
17 allow the deferred prosecution agreement to run its course, for
18 the bank to continue cooperation, for the payment of financial
19 penalties, and for the facilitation of the agreement as set
20 forth in the materials submitted to the Court.

21 THE COURT: And that three years will run from today,
22 assuming I sign paperwork?

23 MR. NESSIM: Yes, your Honor.

24 THE COURT: Any objection?

25 MR. HECKER: No, your Honor.

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1 THE COURT: Very well. I will exclude time between
2 now and three years from today, pursuant to the deferred
3 prosecution agreement, to allow the agreement between the
4 government and the bank to be carried out.

5 I do note, Mr. Hecker, that pursuant to the deferred
6 prosecution agreement, the government may, in its sole
7 discretion, determine that the bank has violated its
8 provisions.

9 Did you wish me to inquire of Mr. Nerfin concerning
10 that aspect of the deferred prosecution agreement?

11 MR. HECKER: I don't think that's necessary, your
12 Honor. It's something we've discussed at some length, as the
13 Court probably understands.

14 THE COURT: Very well.

15 Mr. Nerfin, will you confirm to me that you understand
16 that pursuant to the terms of the deferred prosecution
17 agreement, the government of the United States may, in its sole
18 discretion, determine that the bank has not fulfilled its
19 obligations under the agreement?

20 MR. NERFIN: Yes, I do, your Honor.

21 THE COURT: Very well.

22 Is there anything else that we should do today,
23 Mr. Nessim?

24 MR. NESSIM: No, your Honor, except just to note that
25 we have provided payment instructions to the bank for the

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1 financial penalties at issue here, and a forfeiture complaint
2 will be filed in this district following the receipt of the
3 portion of the funds set aside for forfeiture.

4 THE COURT: That is in accordance with Exhibit 4 or
5 Exhibit D to the agreement?

6 MR. NESSIM: Yes, your Honor.

7 THE COURT: Okay.

8 In that event, we are adjourned, unless there's
9 anything else?

10 MR. HECKER: No. Thank you, your Honor.

11 MR. NERFIN: Thank you.

12 MS. DAVIS: Thank you, your Honor.

13 THE COURT: And the information will be accepted for
14 filing.

15 (Adjourned)